

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID PONCE,

Plaintiff,

v.

HANFORD POLICE DEPARTMENT K-9  
UNIT,

Defendant.

Case No. 1:21-cv-01110-AWI-BAM

**ORDER REGARDING PLAINTIFF'S  
NOTICE OF VOLUNTARY DISMISSAL**

(Doc. 5)

Plaintiff David Ponce ("Plaintiff") is a county jail inmate proceeding *pro se* and *in forma pauperis* in the instant civil rights action. (Doc. 1.)

Currently before the Court is Plaintiff's motion to dismiss this duplicative action filed on September 20, 2021. (Doc. 5.) The Court construes the motion to dismiss as a request for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Under Rule 41(a)(1)(A)(i), "a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the

1 district court lacks jurisdiction to do anything about it.” *Id.* at 1078. No defendant has been  
2 served in this action and no defendant has filed an answer or motion for summary judgment.

3 Accordingly, this action is terminated by operation of law without further order from the  
4 Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is DIRECTED to terminate all  
5 pending motions and deadlines, and to CLOSE THIS CASE.

6  
7 IT IS SO ORDERED.

8 Dated: September 22, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE